

The complaint

Mr and Mrs R complain that Aviva Insurance Limited (“Aviva”) unfairly declined a claim for malicious damage under their home insurance policy. They want Aviva to accept and settle the claim.

Mr and Mrs R are both policyholders but since Mrs R brought the complaint to this service I’ll refer to her throughout my decision.

What happened

Mrs R had home insurance with Aviva. It provided cover for repairing or rebuilding damage caused by one-off events such as fire, storm, flood, theft, or escape of water, among other things. The policy ran from September 2023.

Mrs R needed some repairs to her roof and rendering to her property. So Mrs R undertook some research to find a suitable contractor; including checking reviews and recommendations.

When the contractor started the work it was sporadic. Mrs R says there was no care or system in place. Instead the rendering was removed with varying depths – some areas were taken back to brick. The contractor didn’t come back and finish the work.

Mrs R says the contractor was never intending to carry out the work and caused deliberate damage to her property. So, she reported the matter to Aviva. Aviva declined the claim on the basis the contractor didn’t return to complete the work.

Mrs R says Aviva didn’t come out to view the damage and so she doesn’t feel she was given a fair opportunity to present her case or provide details of the circumstances. Mrs R says she has already paid £4,500 and will need to pay for a repair which has not yet been fully assessed, but is estimated to cost around £8,000. So she complained to Aviva.

Aviva say there is no cover under the policy for the situation Mrs R finds herself in. It accepts she was led to believe there would be cover and paid her £100 for the loss of expectation. It said the circumstances of the claim were not malicious damage but faulty workmanship. So it didn’t uphold the complaint. Aviva accept it incorrectly recorded the claim on the Claims & Underwriting Exchange (CUE) database so it took steps to remove the entry and offered Mrs R £150 to apologise for the error.

Mrs R wasn’t happy with the response from Aviva. She says the contractor was being pursued for fraud by the police and trading standards. And the damage to her property was malicious damage because the contractor never had any intention to complete the work. Because Mrs R remained unhappy she referred her complaint to this service.

One of our investigators looked into things for her. He said Aviva had acted within the terms and conditions of the policy and offered fair compensation for the error in recording the claim on CUE. The investigator said he thought it is more likely the contractor acted negligently and the damage being claimed for was more in line with being faulty workmanship. So he didn’t think Aviva needed to take any further action in respect of the complaint.

Mrs R didn't agree. She said the work carried out was malicious and the contractor had no intention to complete the job. Mrs R feels the actions of the contractor amounts to criminal damage. Because Mrs R didn't agree the complaint has been passed to me for a decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I've reached broadly the same conclusions as our investigator, I'll explain why.

Mrs R has provided detailed testimony about what happened and why her claim should be covered by the policy. I want to assure Mrs R I have read and considered everything she has sent us. But if I haven't mentioned a particular point or piece of evidence, it isn't because I haven't seen it or thought about it. It's just that I don't feel I need to reference it to explain my decision. This isn't intended as a discourtesy and is a reflection of the informal nature of our service.

The claim.

When a policyholder makes a claim, the onus is on them to show that an insured event most likely caused the loss or damage. If its established that an insured event caused the damage an insurer can decline a claim if it can show that an exclusion applies, or a condition has been breached.

Not all damage a home sustains is covered by a home insurance policy. In order for there to be a valid claim under a buildings insurance policy, the damage must have occurred as a result of an 'insured peril'. These 'perils', or events, are specified in every policy and include reasons such as theft, fire, and storm damage. If the damage being claimed for can't be said to be as a result of one of these 'perils', then there can be no valid claim from the start.

The policy documents form part of the insurance contract and sets out what is and isn't covered. So, my starting point is the policy.

The claim has been declined under the peril for malicious damage. Aviva said the damage was caused due to 'poor workmanship'. Having reviewed the policy I don't think there are any other aspects of the policy that would cover this claim. The policy does cover loss or damage caused by "*malicious people or vandals*". The policy didn't define malicious damage. In the absence of a policy definition I think it's reasonable to consider the everyday meaning of the term. That is the crime of intentionally causing damage to the property.

The policy provided cover for loss or damage to the buildings caused by malicious people or vandals. I would normally consider that damage was malicious if the person intended harm by damaging the property. I'm aware Mrs R has referred to fraud offences and prosecutions, as well as the relevant company being struck off companies house. It is my understand that the police and others have been involved in this case and with other work carried out by the person.

Mrs R description of the circumstances in which she says the work began sporadically, no materials were ordered, and the work began in a haphazard way. I've thought about this carefully. Its clear Mrs R has strong views about what happened, which I can understand. Despite the concerning circumstances described, this doesn't persuade me the work was carried out maliciously. In my view, it more likely suggests the person was unqualified or

unable to carry out the work to a satisfactory standard. So I think it was reasonable for Aviva to decline the claim on the basis that the damage to the property wasn't malicious and was, instead, poor workmanship. I empathise with Mrs R however I can't tell Aviva to pay for the damage when the incident isn't covered by the policy.

I think it would have been annoying that Mrs R was told the claim would be approved and then Aviva said it wouldn't be. Aviva accept this. And I think the £100 compensation offered to apologise for the loss of expectation is fair and reasonable in the circumstances of this complaint.

CUE

The Claims and Underwriting Exchange (CUE) is a database which records information about motor and home incidents, as well as other areas. An insurer has a duty to make accurate records. If an insurer is signed up to CUE, then they will make a record of any incident they have been made aware of, whether that leads to a claim or not. In this case Mrs R's report didn't lead to a claim requiring Aviva to pay out any costs. But a report was made, and the information shows Aviva were made aware of an incident. So, given there is a duty on Aviva to make accurate records, I can't say it acted unfairly recording this incident.

Aviva included a cost of £99 on CUE. And it says this refers to the costs of it validating the claim. But Aviva accepts the claim should have been declined when Mrs R made the initial call to report the matter. And it said it would remove the entry on CUE and pay Mrs R £150 by way of an apology. Aviva confirm it has requested the claim be removed from the CUE database. And I think that's fair.

Aviva has made an offer to pay Mrs R £250 to settle the complaint. Mrs R should contact Aviva if she now wishes to accept this.

My final decision

For the reasons I have given, it is my final decision that the complaint is not upheld.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R and Mr R to accept or reject my decision before 26 December 2024.

Kiran Clair
Ombudsman